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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Petition for an Extension of the Compliance )

Date under Section 107 )

of the Communications Assistance )

for Law Enforcement Act )

CC Docket No. 97-213

To: The Commission

**JOINT PETITION FOR EXTENSION OF THE COMPLIANCE DATE**

Pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"),<sup>1</sup> Sawtooth Telephone ("Swatooth"), in cooperation and conjunction with Redcom Laboratories, Incorporated ("Redcom"), (jointly referred to as "Petitioners") hereby respectfully petition the Commission for a two-year extension of CALEA's October 25, 1998 deadline for compliance with Section 103. As detailed in this petition, compliance with CALEA's assistance capability requirements is not reasonably achievable through the application of existing technology and will not be reasonably achievable for at least two years.

<sup>1</sup> Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

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LIST A B C D E

## I. The Petitioners

Redcom is a privately held corporation that designs, manufactures, and delivers a wide range of relatively small switching platforms including types used by Local Exchange Carriers for end office applications. At less than 200 employees, Redcom is probably the smallest manufacturer of central office switching equipment in the United States. Redcom is Sawtooth's telecommunications switching equipment supplier.

Sawtooth is a "telecommunications carrier" as defined by Section 102(8) of CALEA. Sawtooth meets the definitions of a "Common Carrier", "Telecommunications Carrier" and "Rural Telephone Carrier" under the 1996 Federal Telecommunications Act. Sawtooth provides telecommunications services, including local exchange service, to about 600 customers in rural Idaho. Sawtooth is a corporation organized under the laws of the State of Idaho.

Petitioners are committed to building and providing the capability and capacity required by CALEA. However, as discussed in this petition, they cannot do so until the current disputes regarding the industry standard -- J-STD-025 -- have been resolved.

## II. INTRODUCTION

As the Commission is well aware from the comments filed in its recent Public Notice,<sup>2</sup> as well as in its Notice of Proposed Rulemaking initiated last October,<sup>3</sup> because of regrettable delays in the industry standards process (caused by the on-going disputes over

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<sup>2</sup> Public Notice, *In the Matter of Communication Assistance for Law Enforcement Act*, DA No. 98-762, CC Docket No. 97-213 (released on April 20, 1998) ("Public Notice").

<sup>3</sup> Notice of Proposed Rulemaking, *In the Matter of Communication Assistance for Law Enforcement Act*, CC Docket No. 97-213, FCC Docket No. 97-356 (released Oct. 10, 1997) ("CALEA NPRM").

CALEA's capability requirements) and the publication of the Attorney General's final capacity notice more than two years after the original deadline, CALEA-compliant equipment will not be commercially available by October 25, 1998.<sup>4</sup> Indeed, even the Department of Justice ("Department") and the Federal Bureau of Investigation ("FBI") have recognized -- given manufacturers' anticipated deployment schedules -- that such equipment will not be available until after that date.<sup>5</sup>

Unfortunately, the current challenges<sup>6</sup> of the industry standard, J-STD-025, only further delay efforts to make CALEA-compliant equipment available. As the Telecommunications Industry Association ("TIA") explained in its recent petition to the Commission, these challenges make it technically difficult and financially imprudent for manufacturers to proceed with development of their CALEA solutions.<sup>7</sup> Without certainty as to a standard to which to build, Redcom risks wasting valuable engineering resources, sacrificing other

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<sup>4</sup> See, e.g., Comments of the Telecommunication Industry Association (filed on May 8, 1998).

<sup>5</sup> Federal Bureau of Investigation and Department of Justice, *Joint Petition for Rulemaking for Establishment of Technical Requirements and Standards for Telecommunications Carrier Assistance Capabilities Under the Communications Assistance for Law Enforcement Act*, ¶ 118 (filed March 8, 1998) ("FBI/DoJ Joint Petition"); Federal Bureau of Investigation, *Communication Assistance for Law Enforcement Act (CALEA) Implementation Report*, at 15 & Appendix B (January 26, 1998) ("1998 FBI Implementation Report").

<sup>6</sup> Center for Democracy and Technology, *Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act* (filed March 26, 1998) ("CDT Petition"); FBI/DoJ Joint Petition.

<sup>7</sup> Telecommunications Industry Association, *Petition for Rulemaking Under Section 1006 of the Communications Act of 1934, as amended, and Section 107 of the Communication Assistance for Law Enforcement Act to Resolve Technical Issues and Establish a New Compliance Schedule*, at 5-7 (filed April 2, 1998) ("TIA Petition"). See also, AT&T Wireless Services, Inc., Lucent Technologies Inc. & Ericsson Inc., *Petition for Extension of Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act*, at 9-10 (Filed March 30, 1998) ("AT&T Wireless Petition"); Cellular Telecommunication Industry Association, Personal Communications Industry Association & United States Telephone Association, *Response to*

profit-making activity and suffering enormous opportunity costs -- designing, building and testing a solution that might be made obsolete by the Commission's decision.

Do to its small size, Redcom will be affected to a far greater extent than manufacturers of large switches. The design cost of implementing a final CALEA solution into a manufacturer's switching platform is comparable for most manufacturers. However the impact of this effort on a small company such as Redcom is far greater than on large switch manufacturers since a higher percentage of Redcom's resources would be needed to accomplish this task in a similar time frame.

There are also significant cost recovery issues for small manufacturers and small carriers. As compared to large switch manufacturers, Redcom must recover its costs over a much smaller installed base consisting of very small switches. Large switch manufacturers, while possible competitors of Redcom in the small switch arena, still have the large switches to absorb their development cost. Therefore, Redcom finds itself at a competitive disadvantage due to the mandated requirements of CALEA. In a similar fashion, small carriers such as Sawtooth, have far fewer lines than larger carriers over which mandated CALEA upgrade costs can be amortized.

In a report released in early 1998 by the Department and the FBI, 90 percent of historical intercept activity "...of wireline interceptions occurred on Nortel, Lucent, and Siemens switches."<sup>8</sup> The Department and the FBI have placed the highest priority for CALEA upgrades on these large switches and the carriers that use them. Consequently, available funding pursuant to section 110 of CALEA will be directed at carriers that use those large switches. Indeed,

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*Petition for Rulemaking for Establishment of Technical Standards for Telecommunications Carriers and a New Compliance Schedule under the Communications Assistance for Law Enforcement Act*, at 11 (filed on April 9, 1998) ("Carrier Association Response").

<sup>8</sup> 1998 FBI Implementation Report, at 6.

section 109(c) of CALEA specifically directs the Attorney General to allocate funds "...in accordance with law enforcement priorities ...".

Redcom manufacturers switches that are relatively small. The majority of Redcom's central office equipment tends to be located in small rural communities that traditionally have had little or no historical interception activity. Sawtooth is located in such a community. In fact, during the last [#] years, there has been [#] authorized surveillance's on Sawtooth's customers. In addition, Sawtooth's switching equipment does not have some of the advanced features such as ISDN Basic Rate lines or large multiparty conferences that hinder traditional types of law enforcement surveillance. Therefore, Petitioners believe that it is highly likely that the Attorney General will not agree to authorize payment for CALEA upgrades to Sawtooth's equipment. Petitioners also believe that a 2 year delay in performing a CALEA upgrade to Sawtooth's equipment will not impact law enforcement's ability to perform electronic surveillance of Sawtooth's customers.

As the Commission knows the telecommunications industry has not been idle the last three years but has devoted enormous resources to implementing CALEA in a reasonably timely manner and at a reasonable charge. Despite these good faith efforts, however, CALEA-compliant technology will not be available by October 25, 1998 because of the substantial delays in promulgating both the capacity and capability requirements for CALEA. Accordingly, Petitioners request that the Commission exercise its authority and grant an extension of the October 25, 1998 compliance date for at least two years.<sup>9</sup>

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<sup>9</sup> Section 107(c) of CALEA; 47 U.S.C. § 1006(c)

### III. Industry Compliance Efforts

[ NOTE: MOST OF THE FOLLOWING WAS INCLUDED IN TIA's COMMENTS FILED WITH THE COMMISSION FRIDAY (MAY 9, 1998). INDIVIDUAL CARRIERS MAY WISH TO PARAPHRASE OR INDIVIDUALIZE. REDCOM HAS ALREADY PARAPHRASED SOME OF THE TEXT]

In November 1994, shortly after CALEA's passage, the Electronic Communications Service Providers Committee ("ECSPC") -- including representatives from TIA and several of its members -- met to discuss CALEA and formed several "action teams" to create industry guidelines for support of CALEA. At the meeting, the FBI promised to create a detailed analysis of law enforcement's interception requirements -- what would eventually be known as the Electronic Surveillance Interface ("ESI") document.

At the same time, the telecommunications industry had selected TIA -- as an organization accredited by the American National Standards Institute ("ANSI") -- to serve as the "industry association or standard-setting organization" to issue a CALEA-compliant technical requirements standard.<sup>10</sup> TIA's Engineering Committee TR 45 also met with the FBI in late 1994, shortly after passage of CALEA, to begin to understand the requirements of law enforcement. In the spring of 1995, TIA began the process of initiating a standards program and on May 12, 1995 such a standards program, Project Number ("PN") 3580, was formally initiated under the auspices

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<sup>10</sup> Section 107 (a)(2) of CALEA; 47 U.S.C. § 1006(a)(2). Much of the following discussion of the industry standards process has already been documented before the Commission. *See* TIA Petition, Appendix 2 (Testimony of Mr. Matthew J. Flanigan, President, Telecommunications Industry Association before the House Judiciary Subcommittee on Crime (Oct. 27, 1997)); Reply Comments of TIA in the CALEA NPRM, at 6-7; Comments of the ACLU, at 9-10.

of TIA Subcommittee TR45.2.<sup>11</sup> The subcommittee's intent was to complete a CALEA standard on an expedited basis and, indeed, by October 1995, TR 45.2 had adopted a baseline text approximately 170 pages long.

At the FBI's request, however, this early draft was not finalized or balloted in order to permit the FBI an opportunity to prepare its ESI and make technical contributions to the standard. Although CALEA grants *industry* the authority to establish a CALEA-compliant standard, TR 45.2 had encouraged the FBI to participate in its meetings from the outset in the hope that all interested parties could cooperate to formulate a satisfactory standard and avoid subsequent challenges before the Commission.

For several months, despite the fact that industry had a draft standard, TR 45.2 awaited the FBI's contribution. Finally, in July 1996, the FBI formally submitted its ESI document to TR 45.2. The ESI document was considerably more expansive than TIA's draft standard. Although the industry believed that many of the requirements in the FBI's ESI were not mandated by CALEA, the industry sought to reach a consensus standard with the FBI and reconcile their differences.

After several months of extended negotiations and attempts by industry to reach a compromise, in March 1997, TR 45.2 recognized that compromise was not going to be possible. Accordingly, the subcommittee submitted its standard -- Standards Proposal ("SP")-3580 -- to an ANSI public inquiry ballot. Despite the fact that SP-3580 embodied the enormous number of law

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<sup>11</sup> For a while, TIA's efforts were limited to developing a standard for the wireless telephony industry. Committee T1, sponsored by ATIS, it was assumed, would develop a standard for the wireline industry. Eventually, TR 45.2 and Committee T1 decided to combine their efforts and establish a joint standard for both the wireline and wireless industries, with TR 45.2 taking the lead. J-STD-025 is a joint standard of TIA and Committee T1.

enforcement surveillance requirements on which the FBI and industry were in agreement, the FBI characterized the proposed standard as a "disaster" because it did not include eleven additional items requested by law enforcement which industry and privacy groups had determined exceeded the scope of CALEA (the "punch list").<sup>12</sup>

Rather than permit industry to promulgate its standard and then challenge the standard at the Commission (as CALEA provides), the FBI decided to prevent industry's adoption of its own standard and encouraged dozens of federal, state and local law enforcement agencies -- none of which had previously directly participated in the standards process -- to vote against the standard.<sup>13</sup> Thus, even though the standard received strong support from the industry, it did not receive the "consensus" necessary to promulgate it as an ANSI standard.

Around the same time, the FBI filed a challenge with ANSI seeking to revoke TIA's ANSI accreditation. In its long history as an industry standards-setting organization, TIA's accreditation has never been formally challenged. The FBI eventually withdrew its challenge two months later, but only after having placed a enormous strain on law enforcement-industry

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<sup>12</sup> Several members of Congress have since agreed with the assessment of industry and the privacy groups. *See, e.g.*, 143 Cong. Rec. H10939 (daily ed. Nov. 13, 1997) (statement of Rep. Barr) ("I have also concluded that law enforcement has been using CALEA to overreach, and that the FBI is looking to use CALEA for the perfect solution to their wiretapping wishes. Indeed, many of the so-called 'punch-list' items clearly are beyond the scope of the Act"); Letter from Senator Patrick Leahy to Attorney General Janet Reno and Director Louis Freeh (Feb. 4, 1998) ("I understand that a proposed industry standard, SP-3580A, was circulated for adoption by carriers last year and that this standard, if adopted, would have solved the majority of the 'digital telephony' problems identified by the FBI during congressional deliberation of this law. Nevertheless, the FBI criticized this standard for failing to provide a limited number of eleven functions (or 'punch list capabilities'). Certain of these punch list items appear far beyond the scope and intent of CALEA...").

<sup>13</sup> Thirty-five of the 94 ballots received on SP-3580 were "no" votes from law enforcement agencies; the overwhelming majority of which had not previously participated and had submitted identical votes using the FBI's form statement of opposition.



relations, causing TIA to have to expend legal resources defending itself and achieving further delay in the CALEA implementation process.<sup>14</sup>

After the defeat to SP-3580, Subcommittee TR45.2 revised its standard in response to some of law enforcement's and other's comments and submitted a complete reballot, SP-3580A, for an ANSI public inquiry vote in the summer of 1997. Simultaneously, the subcommittee also balloted the standard as an industry internal trial use standard, in which only industry participants were entitled to vote.<sup>15</sup> Again, the proposed ANSI standard failed to achieve consensus -- despite almost unanimous approval by industry participants -- because of an enormous number of "no" votes submitted by law enforcement agencies that had not participated in the process.<sup>16</sup> The industry interim standard, however, was adopted and approved by TR-45.2 for submission to TIA for publication as an interim/trial use standard.

On December 5, 1997, TIA and Committee T-1 jointly published the interim/ trial-use industry standard -- J-STD-025. This standard, at least for voice telephony, provided the first benchmark against which manufacturers could build.

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<sup>14</sup> FBI officials have since apologized for this action, characterizing the challenge as "unfortunate". See Testimony of Mr. H. Michael Warren, Section Chief, CALEA Implementation Section, Federal Bureau of Investigation before the House Judiciary Subcommittee on Crime (Oct. 27, 1997).

<sup>15</sup> Ironically, FBI participants in the standards process had originally *urged* TR 45.2 to ballot its standard as an interim/trial use standard. They expressed concern that an ANSI ballot would be in the public domain and indicated that they would prefer the industry standard to be a proprietary TIA document. TR 45.2, noting that CALEA permitted "any person" to challenge the standard under section 107, decided that an ANSI public inquiry ballot might be the more appropriate method of balloting since this would actively solicit input from other interested parties, such as privacy groups. Privacy advocates did, in fact, return ballots on the standard.

<sup>16</sup> For example, there were more "no" votes from Wisconsin sheriff's offices (93) than from the entire telecommunications industry.

Unfortunately, the FBI immediately indicated that it opposed the standard because it failed to include the punch list items. Privacy groups also began to argue that the industry had wrongfully expanded CALEA's requirements and infringed on consumers' privacy rights. After several months of apparent indecision, the Department of Justice and the FBI formally challenged the standard before the Commission, immediately after a deficiency petition was filed by the Center for Democracy and Technology ("CDT"). As the Commission is aware, both the CDT petition and the FBI and Department's joint petition challenge J-STD-025 as deficient; the CDT contending that two provisions of J-STD-025 regarding "location" and "packet data" exceed the scope of CALEA and the Department and FBI contending that J-STD-025 is deficient because it fails to include nine<sup>17</sup> "punch list" items.<sup>18</sup> Thus, despite three years of good faith and substantial efforts on the part of the telecommunications industry -- planning, drafting, and negotiating a compromise standard -- the industry standard, challenged as both over- and under inclusive, remains enshrouded in uncertainty.

Moreover, this standard was developed without the benefit of the law enforcement's capacity requirements. As the Commission is aware, CALEA requires the Attorney General to provide these requirements to telecommunications industry associations, industry

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<sup>17</sup> A recent legal review by the Department of Justice determined that two of the FBI's original punch list requirements were not supported by CALEA. See Letter from Assistant Attorney General Steve Colgate to Mr. Thomas Barba (Feb. 3, 1998).

<sup>18</sup> The CDT also urges the Commission to "reject any request by the FBI or other agencies to expand further the surveillance capabilities of the Nation's telecommunications systems" and to "find compliance with the assistance capability requirements not reasonably achievable for equipment, facilities, and services installed or deployed after January 1, 1995, and indefinitely delay implementation of the statute, while industry develops a narrowly focused standard." CDT Petition, at 5.

participants, and standards-setting organizations no later than October 1995.<sup>19</sup> Unfortunately, the final notice of capacity was not promulgated until March 12, 1998,<sup>20</sup> more than two years late, and the capacity requirements are still subject to dispute,<sup>21</sup> thus hindering the development of capability requirements that would take into account law enforcement's capacity needs.

As described in TIA's recent filing with the Commission, these delays in the promulgation of both the capability standard and capacity requirements have meant that CALEA-compliant equipment will not be commercially available by October 25, 1998. Moreover, the lack of a final unchallenged standard has made it technically impractical and financially imprudent for Redcom to build CALEA-compliant equipment based on J-STD-025, and equally imprudent for Sawtooth to buy such equipment. To avoid unnecessary waste of engineering resources, time and lost opportunity costs, as well as to avoid additional delays in implementing CALEA, Petitioners are in need of immediate guidance from the Commission, as well as an extension of the carrier compliance date of October 25, 1998.

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<sup>19</sup> Section 104(a)(1) of CALEA; 47 U.S.C. § 1003(a)(1).

<sup>20</sup> Implementation of Section 104 of the Communications Assistance for Law Enforcement Act, 62 Fed. Reg. 12218 (March 12, 1998).

<sup>21</sup> See, e.g., Letter from Mr. Albert Gidari to Mr. H. Michael Warren, Section Chief, CALEA Implementation Section, FBI (March 28, 1998) (identifying several unclear provisions in the Final Capacity Notice) (hereinafter "Gidari letter"); Letter from Mr. H. Michael Warren to Mr. Albert Gidari (April 14, 1998). Moreover, the March notice is limited to only those "services that are of most immediate concern to law enforcement -- that is, those telecommunications carriers offering local exchange services and certain commercial mobile radio services, specifically cellular service and personal communication services (PCS)." 62 Fed. Reg. at 12220. The Notice explicitly ignores numerous other technologies (such as paging, satellite and other types of mobile radio service) that the FBI has maintained are covered by CALEA.

#### IV. THE COMMISSION SHOULD GRANT PETITIONERS' REQUEST FOR A TWO YEAR EXTENSION UNDER SECTION 107(C)

CALEA grants the Commission the authority, on a petition by a telecommunications carrier, to extend the carrier compliance deadline "if the Commission determines that compliance with the assistance capability requirements under section 103 *is not reasonably achievable through application of technology available within the compliance period.*"<sup>22</sup> [Petitions submitted to the Commission under CALEA Section 107 would appear to apply only to new equipment, facilities or services that are not subject to government reimbursement (equipment, facilities or services installed or deployed after January 1, 1995). Sawtooth has installed equipment, facilities and services throughout its service area since January 1, 1995.] It is undisputed that CALEA-compliant technology has not been available and will not be available by October 25, 1998.<sup>23</sup>

The technology to implement CALEA is not available because of unavoidable circumstances and delays beyond the control of the Petitioners and beyond the control of industry. As previously discussed, despite industry's good-faith efforts, the capability

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<sup>22</sup> Section 107(c)(2) of CALEA; 47 U.S.C. § 1006(c)(2) (emphasis added).

<sup>23</sup> See TIA Petition, at 9; AT&T Wireless Petition, at 2; CDT Petition, at 3; AirTouch Communications, Inc. & Motorola, Inc., *Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date* (filed on May 5, 1998); AirTouch Paging, Inc., *Petition for an Extension of the CALEA Capability Assistance Compliance date* (filed May 4, 1998); Ameritech Operating Companies and Ameritech Mobile Communications, Inc., *Petition for the Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act* (filed on April 24, 1998); Powertel, Inc., *Petition for an Extension of Time to Comply with the Capability Requirements of Section 103 of the Communications Assistance for Law Enforcement Act* (filed on April 23, 1998) ("Powertel Petition"); PrimCo Personal Communications, L.P., *Petition for an Extension of CALEA's Assistance Capability Compliance Date* (filed on April 21, 1998); FBI/DoJ Joint Petition, at 65; 1998 FBI Implementation Report, at 15. See also the numerous Comments and Reply comments filed in both the Commission's CALEA NPRM and Public Notice.

requirements remain the subject of great controversy. There is no final unchallenged standard to which manufacturers can build. As TIA explained in its petition for rulemaking, without certainty as to such a standard, Petitioners risk wasting valuable engineering resources, sacrificing other profit-making activity, and suffering enormous opportunity costs.<sup>24</sup> Redcom agrees that any modification of the existing standard is likely to require fundamental changes in Redcom's CALEA solution. Because of its size, the consequences of this would be far greater for Redcom than for larger switch manufacturers. Even the FBI and Department recognize in their joint filing that manufacturers require guidance from the Commission before they can finalize and deploy their CALEA solutions.<sup>25</sup>

Moreover, proceeding in the face of the challenged industry standard the uncertainty as to the meaning of the assistance capability requirements would risk having industry participants develop nonuniform solutions to CALEA. Sawtooth's networks intermix different manufacturers' devices. Such devices must be interoperable. Subtle design differences could cause system incompatibility and network unreliability.

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<sup>24</sup> TIA Petition, at 6-7 ("Because any modification in J-STD-025 could require complex changes in a manufacturer's individual CALEA solution, proceeding in the face of the current challenges to J-STD-025 would cause manufacturers to waste valuable engineering resources, sacrificing other profit-making activity, and expose the companies to the prospect of having to create several versions of its CALEA solution. This clearly would not serve the public interest"). *See also* AT&T Wireless Petition, at 9-10; Carrier Association Response, at 11.

<sup>25</sup> FBI/DoJ Joint Petition, at 64-65 ("the product manufacturing and deployment schedules to produce the software and hardware necessary to comply with CALEA must be set in motion well in advance of the date that the technology actually becomes publicly available for use. If the deficiencies in the TIA interim standard are not addressed immediately, law enforcement, telecommunications carriers, and equipment manufacturers will be uncertain as to how to proceed.").

An additional factor delaying implementation of CALEA solutions has been the Attorney General's failure to publish, in a timely manner, a final notice setting forth the system wiretap capacity for all telecommunication systems covered by the statute. Capacity and capability are closely interrelated. A manufacturer may design one type of capabilities solution to support 25 wiretaps per switch and a different type to support 5 wiretaps per switch.

In addition, despite industry's repeated requests, it is Petitioners understanding that the FBI has not yet identified a contractor to develop the collection equipment necessary for law enforcement to receive and process the information that will be provided under J-STD-025. This equipment is absolutely critical for interface testing before Redcom's solutions can be installed in Sawtooth's system. Thus, even if Sawtooth were poised to install CALEA-compliant equipment, there would be no means for testing the equipment or even for law enforcement to receive any information once the equipment is installed. This is clearly not what Congress intended when it passed CALEA.

CALEA-compliant technology will not be available by October 25, 1998 because of the substantial delays in promulgating both the capacity and capability requirements for industry. It is widely recognized that it will take up to two years to develop technology that implements an unchallenged industry standard.<sup>26</sup> Once final technical standards are issued, manufacturers require approximately two to three years to (1) develop, code and test the software, and design or modify the hardware necessary to meet CALEA's assistance capability requirements; and (2) work with their carrier customers to modify the carrier's equipment.

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<sup>26</sup> See TIA Petition, at 8; AT&T Wireless Petition, at 6 & 10. See also Comments of TIA in the Commission's CALEA NPRM, at 9 ("standard industry practice requires 24-30 months of development before manufacturers can even release a software package containing new features").

facilities, and services to accept the new technology. Even the Department of Justice and FBI recognize that there is a lag between the promulgation of a standard and deployment of equipment consistent with that standard.<sup>27</sup>

To grant an extension of less than two years would greatly harm industry participants by imposing an implementation schedule that is not reasonably achievable. As the FBI stated in its January 1998 Implementation Report, "solution providers will develop and release CALEA solutions in accordance with their established business processes and cycles." To require Redcom to accelerate these cycles to complete implementation in less than two years would prohibit Redcom from providing such implementation in a cost-effective manner and would cause Redcom substantial opportunity costs -- inefficiencies and costs that would likely be passed to ratepayers and taxpayers, results contrary to CALEA's expressed goals and public interest.<sup>28</sup>

Petitioners respectfully request that the Commission grant a two-year extension of the carrier compliance deadline, to allow Petitioners, law enforcement, and the Commission to focus their attention and resources on developing an expeditious resolution of the current challenges of CALEA.

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<sup>27</sup> See FBI, *Communications Assistance for Law Enforcement Act Implementation Plan*, at 22 and 23 (March 3, 1997); 1998 Implementation Report, at 15 ("[l]aw enforcement recognizes that for some switches, a CALEA solution may need to be phased in through routine switch software releases and upgrades. The realities of technical solution development and the impact of the solution deployment in the network are not lost on law enforcement"); Testimony of the Attorney General before the House Appropriations Subcommittee for Commerce, State, Justice, the Judiciary, and Related Agencies (February 26, 1998); FBI/DoJ Joint Petition, at 63 (asking the Commission to "provide a reasonable time for compliance with the technical standards adopted in this rulemaking proceeding by making the standards effective 18 months after the date of the commission's decision and order").

<sup>28</sup> See, e.g., Section 107(b)(1)-(4); 47 U.S.C. § 1006(b)(1)-(4) (enumerating criteria for the Commission to consider when an industry standard has been challenged as deficient).

## **V. THE COMMISSION SHOULD TOLL THE COMPLIANCE DATE DURING PENDENCY OF THIS PETITION**

TIA, the Carrier Associations and several individual carriers have all requested that the Commission toll the compliance date during the pendency of its rulemaking.<sup>29</sup> Petitioners agree with this request.

Despite the filing of this petition, the federal or state law enforcement agencies may seek to enforce CALEA in court and to impose penalties of up to \$10,000 per violation against a party deemed not to be in compliance with CALEA.<sup>30</sup> In order to protect Petitioners from the threat of an enforcement action brought while Petitioners present their case to the Commission and while the Commission decides the merits of that case, Petitioners respectfully request that the Commission expressly toll the CALEA compliance date during the pendency of this petition. Petitioners also request that, if this petition is denied in whole or in part, the Commission grant Petitioners a reasonable period of time after the Commission's ruling to comply with the Commission's decision and order.

## **VI. CONCLUSION**

For all of the reasons set forth in this petition, Petitioners request that the Commission grant a two-year extension of the CALEA compliance date. Petitioners also request that the Commission toll the compliance deadline while the Commission reviews this petition.

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<sup>29</sup> TIA Petition, at 5-7; AT&T Wireless Petition, at 11; Carrier Association Response, at 11; PrimCo Petition, at 6-7.

<sup>30</sup> See Section 108 of CALEA; 47 U.S.C. § 1007.



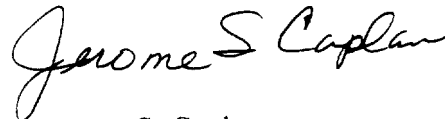
August 14, 1998

Respectfully submitted

A handwritten signature in black ink, appearing to read 'John Stuart', with a stylized, looping flourish at the end.

John Stuart  
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A handwritten signature in black ink, reading 'Jerome S. Caplan', with a large, elegant initial 'J'.

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